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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,985	10/19/2001	John H. Schneider	ITW-13111	5951

7590 06/23/2005

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EXAMINER
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TRUONG, THANH K

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 06/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/042,985

Applicant(s)

SCHNEIDER ET AL.

Examiner

Thanh K. Truong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,3,5-11,13,14,16-22,49,52 and 54 is/are pending in the application.
- 4a) Of the above claim(s) 12,23,51 and 53 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5-11,13,14,16-22,49,52 and 54 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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### **DETAILED ACTION**

1. This action is in response to applicant's After Final Amendment received on June 2, 2005.
2. Applicant's cancellation of claims 2, 4, 15, 24-48, 50, and 55-57 is acknowledged.
3. Applicant's election without traverse of Species 1, the embodiment shown in Figures 1 and 2; claims 1-11, 13-22, 33, 40-50, 52, 54 and 55, in Paper No. 7 is acknowledged.
4. Claims 12, 23, 51 and 53 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable genetic or linking claim. Election was made **without** traverse in Paper No. 7.

### **Response to Request to Withdrawal Holding of Finality**

5. In light of the Applicant's request for the withdrawal of the finality of the Final Office Action in the After Final Amendment received on June 2, 2005, the finality of the previous office action is hereby withdrawn.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which

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said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 3, 5-11, 13, 14, 16-22, 49, 52 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strand et al. (6,360,513) in view of H. J. Keller (3,255,896) or Deutschländer (4,147,583) or Kopp et al. (5,371,997).

Strand discloses a package (figures 3 & 5) comprising: a receptacle having a mouth at an upper end; a flexible zipper (20) attached to the mouth and comprising first and second fastener strips; a slider (20a) movably mounted to the zipper for alternately opening or closing portions of the first and second fastener strips, the slider having a top and bottom; and a header (11) enclosing the zipper and the slider; the enclosed header comprises first and second side edges and first and second walls each extending from the first side edge to the second side edge; the side edges comprising a first and second tear notches (24) formed therein at a first elevation that is at or higher than an elevation of the top of the slider, header comprising the line of weakness (12) having a straight portion extending across the header at a second elevation that is lower than an elevation of the bottom of the slider (figure 5), the first wall of the header further comprising a first line of weakness (13) traversing a range of elevations encompassing the first and second elevation (figure 5).

Strand further discloses: the first and second header walls are sealed together, the first and second header walls are respectively integrally formed with opposing walls of the receptacle (15 of figure 10); and the first elevation is above a top of the slider and the second elevation is below a bottom of the slider (figures 3 and 5).

Strand discloses the claimed invention, but does not expressly disclose that the second line of weakness 13 is a slit.

Keller ('869) discloses a receptacle (10) comprising the series of the slits (14) (line of weakness or line of perforation across the top of the receptacle) to provide means to help the consumers to easily remove the top portion of the receptacle (column 2, lines 57-63).

Deutschländer ('583) discloses slit (24, 24') on a receptacle (11) to facilitate the tearing-open of the transverse seam (column 1, lines 33-34).

Kopp ('997) discloses slit (9, 9', 29, 39) on packaging bag (1) providing a tear-open slit for aiding in initiating the tearing of the package (column 1, lines 17-19).

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified Strand's line weakness (13) by a slit as taught by Keller ('869) or Deutschländer ('583) or Kopp ('997) to provide a means to assist and to facilitate a manual tearing-opening and the removal of the portion of the receptacle (create an opening and providing access to the interior of the receptacle).

Moreover, it appears that Strand's package would perform equally well with the lines of weakness (13), for providing an easy way to open the package when the consumer tries to tear the header open. Accordingly, the use of the slit (20) in the present claimed invention is deemed to be a design consideration which fails to patentably distinguish over the prior art of Strand.

Strand further discloses: the first lines of weakness (13) is inclined at an angle in a range of 30 to 90 degrees relative to a line of the zipper (20), and the lower point of the first lines of weakness (13) being further away from the closest one of the first and second side edges than is the upper point of the first lines of weakness (13); and the first and second lines of weakness (12) and the first and second lines of weakness (13) are overlapping.

### ***Response to Arguments***

8. Applicant's arguments filed June 2, 2005 have been fully considered but they are not persuasive.

In response to the Applicant's argument that there is no suggestion in Strand or Keller that one of those slits extends from an elevation higher than the top of the slider to an elevation lower than the bottom of the slider. The examiner maintains that Strand discloses that the line of weakness (13) extends from an elevation higher than the top of the slider to an elevation lower than the bottom of the slider (figure 5), and the line of weakness (13) may be substituted with a slit because they both perform the same function of a "line of weakness" providing an easy opening means to assist the manual tearing-opening of the package.

The new references of Deutschländer (4,147,583) and Kopp et al. (5,371,997) that are used in this Office Action further illustrate that the slit and the line of weakness are well known in the art for providing a means to facilitate a manual tearing-open of the portion of the receptacle (create an opening and

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providing access to the interior of the receptacle), and one can be used in place of the other.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

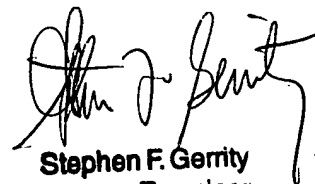
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K. Truong whose telephone number is 571-272-4472. The examiner can normally be reached on Mon-Thru 8:00AM - 6:30PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tkt  
June 18, 2005.



**Stephen F. Gerrity**  
**Primary Examiner**

571-272-4460